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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DBI EXHIBIT 2

Dixie Broadcasting, Inc.

Statement of Susan A. Marshall

1990

DBI EXHIBIT 2

Dixie Broadcasting, Inc.

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STATEMENT OF SUSAN A. MARSHALL

THE ATTACHED STATEMENT
IS BEING PROVIDED UNDER PENALTY OF PERJURY

DATE

SUSAN A. MARSHALL

STATEMENT OF SUSAN A. MARSHALL

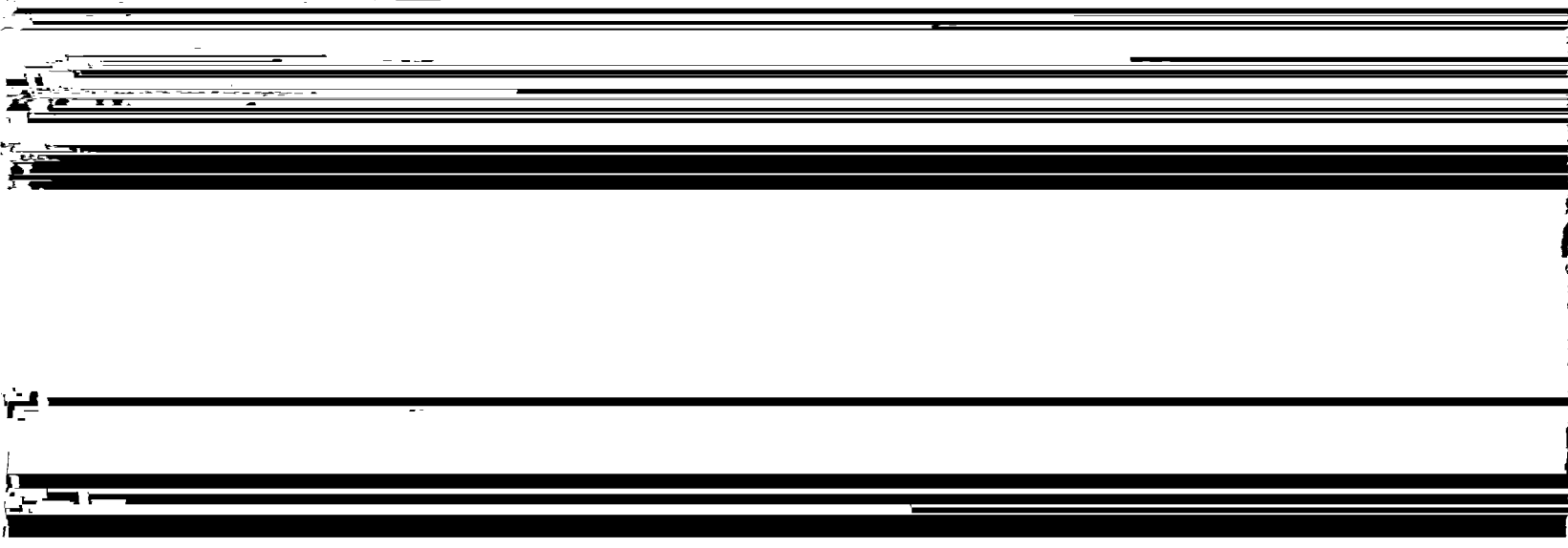
Susan A. Marshall hereby states under penalty of perjury:

1. I have been an attorney at the law firm of Arent, Fox, Kintner, Plotkin & Kahn ("Arent Fox") since 1978, first as an associate and as a senior attorney since 1991. I practice communications law and deal with, among other things, equal employment opportunity ("EEO") matters involving broadcast clients.

2. I began working on the Dixie Broadcasting, Inc. ("DBI") account in early 1989 under the supervision of Dan Van Horn, who at that time was an Arent Fox partner. In March 1989, Mr. Van Horn asked me to prepare an opposition to the "Petition to Deny" filed by the NAACP and the National Black Media Coalition on March 1, 1989 (the "Petition"), against the 1988 renewal applications of DBI (the "Renewal Applications") for the licenses of Stations WHOS(AM) and WDRM(FM), Decatur, Alabama (the "Stations"). To my knowledge, this was one of the first petitions to deny radio licenses based on the new

4. I prepared the draft of the Opposition, which was reviewed and edited by Mr. Van Horn before it was filed. The factual portion of the Opposition (paragraphs 4 through 17) was based upon DBI's EEO program as set forth in the Renewal Applications (the "Form 396"), DBI's Annual Employment Reports, certain minority hiring and recruitment information telecopied to Mr. Van Horn by Mr. Bramlett on March 17, 1989 (a copy of which is attached hereto as Attachment 1), and follow-up conversations with Mr. Bramlett. The remainder of the Opposition -- the sections entitled "INTRODUCTION" and "CONCLUSION" -- were prepared by me based upon the facts set forth in paragraphs 4 through 17 without any further input from or discussion with Mr. Bramlett. I also drafted the Statement of Mr. Bramlett attached as Exhibit C to the Opposition.

5. In the Opposition, DBI corrected certain inaccuracies in earlier EEO-related FCC filings. Specifically, DBI noted that there were 12 hires during the period November 1, 1987, to November 2, 1988 (the "Reporting Year"), not 16 as had been reported in the Form 396. Four persons who had worked at the Stations as independent contractors, not employees, were improperly included in the "new hire" total. (Opposition at note 5.) This mistake was discovered by Mr.



failed to provide the requisite racial breakdown. (Opposition at note 10.) I discovered these discrepancies when I compared the minority hiring information supplied by Mr. Bramlett with the Stations' Annual Employment Reports. The explanations for the discrepancies were provided by Mr. Bramlett.

6. I have read the "Mass Media Bureau's Comments in Opposition to Motion for Summary Decision" filed January 27, 1993 (the "Comments"). The Comments appear to contend that the Opposition contains knowingly "false statements" that "DBI's affirmative action efforts were in accordance with the Commission's Rules" and further allege that DBI's subsequent failure to respond fully to FCC inquiries was part of an intentional attempt to cover up the fact that DBI did not have any records to support its assertions of compliance in the Opposition. Insofar as the Comments imply that I attempted to deceive the Commission, they are baseless. The Opposition is structured like any other pleading. It includes a statement of facts supplied by the client and legal argument, based on those facts, prepared by our firm. Similarly structured pleadings concerning EEO matters have been filed by our firm on many occasions. The conclusory statements concerning DBI's compliance with the FCC's EEO Rules were legal conclusions and were not intended to be a factual assertion. Rather, they were legal conclusions based on the facts set forth in the Opposition and there was no intent to deceive or misrepresent. Further, I believed in good faith based upon my review of FCC developments that the legal arguments were well founded; that is, that the combination of the

number of minority hires and DBI's good faith efforts to recruit minorities did not warrant any FCC sanction.

7. I recognize now, based upon case law that has developed over the last few years, that the Commission will impose reporting conditions in most cases where a licensee has not maintained adequate records of its EEO efforts. At the time of the preparation of the Opposition, however, this was by no means clear, at least in my mind. I made a similar argument to the FCC in July 1989 for another client of the firm which, according to the Commission's own finding, did not have documentation of the number, race and gender of applicants or the recruitment sources contacted for almost all of its 55 hires over the period under review. Nonetheless, the FCC in that case did not impose reporting conditions or any other sanction other than to admonish the licensee to comply with the EEO Rules in the future.

B. The July 3 Letter and DBI's Response.

8. By letter dated July 3, 1989 (the "July 3 Letter") from Glenn A. Wolfe, Chief of the FCC's EEO Branch, to Mr. Bramlett, Mr. Wolfe stated there was "insufficient information to make a determination that efforts were undertaken to attract minority applicants whenever there were job openings" and therefore requested the following categories of information for "each position filled" during the three-year period from November 1, 1985, to November 1, 1988: "job title, 395-B job classification, the full or part-time status of the position, the date the position was filled, the referral sources contacted, the number of persons interviewed (indicating those that were minority and female), and the referral source, gender and

race or national origin (e.g., Hispanic) of the successful candidate." While I read this letter at some point in the summer of 1989, I was on vacation in the latter part of July 1989. I do not recall being involved in discussions with Mr. Bramlett or Mr. Van Horn concerning DBI's July 28, 1989, response to the July 3 Letter (the "July 28 Response").

C. The March 15 Letter and DBI's Response.

9. In mid March 1991 I received a copy of a letter dated March 15, 1991, from Glenn A. Wolfe to Mr. Bramlett (the "March 15 Letter"). The March 15 Letter was characterized as a "follow up" to a February 20, 1991, conversation between Hope G. Cooper and me regarding DBI's response to the July 3 Letter. The March 15 Letter read in pertinent part:

In your inquiry response, you provided information only for positions for which you considered and/or hired minorities. However, we requested recruitment and hiring information for all full-time and part-time hires during the reporting period. Because we do not have enough information to determine whether sufficient efforts were undertaken to attract Black applicants when job openings occurred, we are again requesting the following information.

The letter went on to request the same seven categories of information requested in the July 3 Letter for each position filled during the one-year period November 1, 1987 to November 1, 1988. This was different in scope from the July 3 Letter, which covered the three-year period November 1, 1985 to November 1, 1988.

10. I do not recall the specific conversation with Ms. Cooper on February 20, 1991, although I do recall that as a general matter each


letter from the FCC received in connection with this project was preceded by a telephonic inquiry from Ms. Cooper. When I first received the March 15 Letter, I noticed that it was similar to letters sent by the FCC to other clients seeking additional EEO information. I thought it unusual, however, that the letter only sought information with respect to the one-year period from November 1, 1987 to November 1, 1988. In my experience, most letters of a similar ilk from the FCC had covered periods of three years or more.

11. At the time I received the March 15 Letter I believed that the information included in the Opposition was all the information available to DBI with respect to the Reporting Year and the period 1982 through February 1989 (the "License Period") that was responsive to the categories of information requested in the March 15 Letter. This belief was based upon my recollection that, in preparing the Opposition, we had obtained as much information as we could from Mr. Bramlett because he did not have complete records. This belief was also based upon my review of the July 3 Letter, which requested the same categories of information as the March 15 Letter for the three-year period November 1, 1985 to November 1, 1988, and the July 28 Response which merely resubmitted the Opposition and provided no additional information.

12. I recall talking to Mr. Bramlett in the course of preparing DBI's response to the March 15 Letter and mentioning it was unusual that the Commission had just asked for one year's worth of information. I asked Mr. Bramlett in a general fashion, without going through each category of information requested, whether he had any

more information to add with respect to the Station's EEO efforts and he said he did not. The balance of my conversations with Mr. Bramlett with respect to DBI's response to the March 15 Letter focused on gathering information regarding the period commencing February 1989.

13. DBI responded to the March 15 Letter by letter dated April 18, 1991, with attachments, from me to Mr. Wolfe (the "April 18 Response"). The April 18 Response included my cover letter and a six-page Supplemental Report (the "Supplemental Report") to which there were attached Exhibit A [a one-page Statement dated April 18, 1991.



The second part of the Supplemental Report (pages 4-6) provides new information concerning the Stations' recruitment efforts and minority and non-minority hiring record with respect to the period commencing February 1989. The new information consists of a description of eight hires at the Stations since February 1989, including two Black males and one Black female, along with the number of minority and non-minority referrals, the referral sources and the job classification for each position.

15. I prepared the Supplemental Report based upon my review of the Opposition and information supplied by Mr. Bramlett. The Supplemental Report was reviewed by Mr. Van Horn before it was sent to Mr. Bramlett. In going over the draft of the Supplemental Report based upon new information provided by Mr. Bramlett, I focused specifically on the new facts set forth in pages 4 through 6 and we did not discuss the materials preceding those pages, which represented my attempt to summarize the information set forth in the Opposition.

16. The statement in the Supplemental Report that there was "nothing more to add" was based upon Mr. Bramlett's statement to me and my mistaken belief about the facts, as set forth in paragraph 11 above. The above-quoted paragraph on page 3 of the Supplemental Report was added by me with the intention of summarizing the preceding two pages of the Supplemental Report and pertinent portions of the Opposition. (Paragraph 14, supra.) I did not discuss this paragraph with Mr. Bramlett. The statement that there were "approximately 20" new employees during the License Period was based upon the statements in the Opposition that there were 12 new hires in the Reporting Year

and seven minority hires in the balance of the License Period. I believed that the information set forth in the Opposition represented all the information available for the License Period. While the total number of hires discussed in the Opposition equaled 19, I wrote "approximately 20" to account for the possibility that there were additional hires since DBI did not have complete records and that some of the information in the Opposition was based on memory.

17. During the period in question, I never doubted the accuracy of my statement that there had been approximately 20 new employees during the License Period. While I had been practicing communications law for over twelve years, I had not been personally involved in the day-to-day operations of radio stations and I did not think that 20 hires was out of the ordinary. As I said in my deposition:

I didn't question the number 20, as I said before, because I pictured this as a small station, as a Mom and Pop organization, and as a very stable organization where few people came and left. And even if it was a larger organization, I listen to WMAL, Harden and Weaver, every morning and those two people have been there for 20 or 30 years and nobody has left. They're the same engineers -- and I have never visited radio stations, and the fact that there were only 20 people that they hired during that seven year period didn't strike me as being unusual and I never questioned it in my own mind. I never questioned Mr. Bramlett about it.

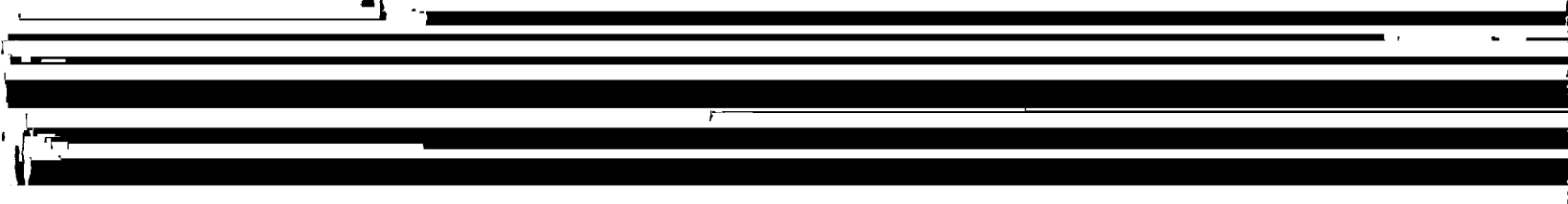
I did not focus on the composition of the 20 hires: 12 non-minorities in one year -- the Reporting Year -- and seven minorities in the balance of the License Period. In hindsight I recognize that I should have questioned my client further about this scenario, but I believed the number 20 was correct.

D. The October 15 Response.

18. The next communication between the FCC and DBI took place on or about October 7, 1991, when Ms. Cooper telephoned me. I recall that Ms. Cooper, in a brief conversation, questioned the variation in the Stations' hiring rate, noting that for the Reporting Year there were 12 hires and that this was more than other years either before or after. After my conversation with Ms. Cooper, I telephoned Mr. Bramlett. I recall telling Mr. Bramlett that Ms. Cooper had questioned why there was a variation in hiring rates, comparing the 12 new hires in the Reporting Year to a lesser number on either side of that time period. Mr. Bramlett explained that the turnover rate at radio stations varied from year to year. During this short conversation, I focused on the variation in turnover rate; I did not focus at all on the number 20 because I had no doubt as to its accuracy. I then drafted a statement for Mr. Bramlett attempting to explain the variations in the number of hires. I showed the draft to Mr. Van Horn before I sent it to Mr. Bramlett. I do not remember whether Mr. Van Horn made any substantive edits.

19. By letter dated October 15, 1991, from me to Mr. Wolfe (the "October 15 Response"), including a three-page Statement dated October 10, 1991, signed by Mr. Bramlett (the "October 10 Statement"), DBI responded to Ms. Cooper's informal telephonic inquiry. At paragraph 3 of the October 10 Statement, Ms. Cooper's informal request is described as follows:

Ms. Cooper has requested information concerning the
number of new hires at the stations during the period.



Cooper is questioning why so few new hires (20) were reported for that seven-year period when the stations had as many as eight, almost one-half that number, job openings during the 15-month period from February 1989 through mid-April 1991, alone.

DBI's response to this request is set forth at paragraph 4 of the October 10 Statement, as follows:

In response to this request, the stations' staff has again reviewed the stations' records and determined that there is nothing more to add. All of the information which is available for the 1982 through April 1991 period concerning the stations' EEO efforts has been provided to the Commission in various filings, including the licensee's July 28, 1989 response to the FCC's earlier request for EEO information and the licensee's April 18, 1991 Supplement thereto. The stations' staff has determined that the variation in the number of available vacancies during the years under scrutiny can only be attributed to the turnover rate at radio broadcast stations which often varies from year to year.

20. The facts set forth in the October 10 Statement were consistent with my understanding at the time. I did not question the accuracy of the representation that there were 20 new hires during the License Period. I therefore did not question Mr. Bramlett about that fact in connection with the preparation of the October 10 Statement.

E. Follow-Up Conversations with FCC Staff.

21. Between the filing of the October 15 Response and mid-December 1991, I had a series of telephone calls with Ms. Cooper and, on one occasion, Mr. Wolfe. The purpose of the conversations was to clarify the number of total hires during the License Period. Ms. Cooper had concluded, based on her review of the Stations' Annual Employment Reports, that the number of hires during such period must have been more than 20. At first, I did not agree with Ms. Cooper's

analysis. I did my own analysis of the Annual Employment Reports and arrived at a total of 20 new hires for the period. My analysis consisted of the following. I calculated the change from year to year in the number of full-time and part-time employees at the Stations as reflected in the Stations' Annual Employment Reports, after modifying the numbers to reflect the corrections made in the Opposition. I counted any increase in the total number of full-time and part-time employees from one year to the next as an increase in the number of hires. I added all such increases from year to year during the License Period and came up with 20. I did not subtract any decreases in such employees from year to year. After follow-up clarifying conversations with Ms. Cooper, I realized that under my analysis, based solely on the Annual Employment Reports, there were no new hires between 1987 and 1988 because the number of full-time and part-time employees in the 1988 Report was less than the corresponding number in the 1987 Report. In fact, however, as had been reported in the Renewal Applications as corrected in the Opposition, there had been 12 hires during that period. I therefore came to agree with Ms. Cooper that there must have been at least 32 new hires during the License Period (i.e. 20 based on my analysis of the Annual Employment Reports plus 12 in the Reporting Year).

22. I discussed my conversations with Ms. Cooper with Mr. Bramlett. Because I believed that all available documents had been reviewed in connection with the information previously provided to the Commission, I asked Mr. Bramlett, probably in mid-December 1991, to have his staff members search their collective recollection to see

to me that he should also be able to provide similar information for the 12 hires during the Reporting Year. I asked him if he could do so and he said he could try, but that it too would be based solely upon recollection. Mr. Bramlett provided me with this information shortly thereafter. I then began to draft a response to the January 2 Letter.

25. Early on January 8, the day DBI's response to the January 2 Letter, which would have disclosed 17 additional hires, was to be filed, Mr. Bramlett telephoned me and told me that payroll records had been located which he believed could clarify the total number of hires during the License Period. At this point Mr. Bramlett had not reviewed the payroll records so it was unclear what they would show. I told Mr. Bramlett I would talk to Mr. Van Horn about how to proceed and call him back. I then spoke with Mr. Van Horn. We agreed that this information should be reviewed and filed with the Commission as soon as possible. I then called Mr. Bramlett back and directed him to review the records and provide me with accurate and complete hiring information as soon as possible for submission to the FCC. I then called Ms. Cooper and requested an extension of time within which to respond to the January 2 Letter. It was agreed that the response would be filed by January 13. Midday on January 10, 1992, Mr. Bramlett telecopied to me information, based upon the payroll records, with respect to the hiring of 83 employees and 57 non-employees. A copy of this document is attached hereto as Attachment 2. At no time was consideration given by me, or to my knowledge by Mr. Bramlett or Mr. Van Horn, to not disclosing the newly discovered information, even

though I realized it would have a negative impact on the Renewal Applications.

26. By letter dated January 13, 1992, from me to Mr. Wolfe, DBI submitted in response to the January 2 Letter a Supplemental Report (the "Second Supplemental Report") consisting of four pages of text, attached to which were Exhibit A (titled "New Hires at Stations WHOS/WDRM During 1982 - February 1989") and Exhibit B (a Statement dated January 13, 1992, signed by Mr. Bramlett (the "January 13 Response")). I prepared the January 13 Response based upon my review of DBI's previous filings, my understanding of the facts and information supplied by Mr. Bramlett. My draft of the January 13 Response was telecopied to Mr. Bramlett for his review and signature at approximately 3:30 p.m. on January 13. In Exhibit A of the Second Supplemental Report, DBI (a) set forth the number of minority and non-minority hires for each of the years 1982, 1983, 1984, 1985, 1986, 1987 and 1988, and for January and February 1989; (b) disclosed that there had been an additional 57 people during this period who worked at the Stations from one to 60 days "as talent only and were not employees" under the Stations' policy; and (c) listed the recruitment sources relied upon during the License Period. The text of the Second Supplemental Report consists of a summary of the January 2 Letter followed by the following two paragraphs starting on page 2:

In response to the instant request, the licensee has again reviewed the stations' records. As a result of its review of the existing records, the licensee has determined that the information previously provided to the Commission was the best information the licensee was able to provide based on available documentation of recruitment efforts. The licensee has not, prior to

the instant report, provided recruitment information which goes beyond that which could be verified from contemporaneous records maintained at the stations.

However, in view of the FCC's concern in its most recent letter that the stations had a greater number of new hires during the 1982 through February 1989 period than previously reported, the stations' staff has searched its collective memory and determined that 83 new hires, including the seven minority new hires described in the licensee's July 28 Report, rather than the 'approximate [sic] 20,' should have been reported. [Footnote 2 omitted.] It must be noted that the recruitment information for these additional new hires is based almost entirely on the collective memory of the staff. With the exception of some payroll lists, [footnote 3 omitted] no documentation exists to support the information provided about the additional new hires.

Footnote 3 reads as follows:

The existence of payroll lists were discovered last week. The lists were discovered in a warehouse off-site, and, according to the staff, apparently had been stored there during a move of the stations' studios. The staff was unaware of the existence of these payroll lists and believed that they had been lost or destroyed during the move. Consequently, the staff had relied on the few records which remain on site at the stations to

filing deadline. My focus was to ensure that the facts set forth therein were as accurate as possible.

28. I did not learn until meeting with Mr. Bramlett after the Hearing Designation Order was released in the Fall of 1992 that he had been unaware until December 1991 that the FCC wanted the total number of hires during the License Period.

29. The two paragraphs quoted above from page 2 of the Second Supplemental Report (see paragraph 26) were prepared and ready to be sent to Mr. Bramlett for his review on January 8, 1992, in connection with contemplated disclosure of the 17 additional hires which Mr. Bramlett had derived based solely on his memory. The contemplated disclosure included Mr. Bramlett's best recollection of the recruitment sources, and the number, race and gender of interviewees, for each of the 17 positions filled. When Mr. Bramlett provided the revised hiring information based on the payroll records, I marked up my draft of the January 8 filing in preparing the January 13 response. No change was made to the first paragraph and the second paragraph was modified to change the number of new hires to 83 from 37 and to add footnote 3 and the reference to the payroll lists in the final sentence.

30. At the time that the explanation set forth in footnote 3 as to the basis for the earlier estimate of approximately 20 new hires was prepared, it reflected what I believed to be the truth. When I learned that there were at least 83 new hires, I never asked Mr. Bramlett point blank how he ever could have represented in the April 18 Response and the October 15 Response that there were only 20 hires.

Instead, I focused on what in my mind was the most important matter -- getting the new information to the Commission as quickly and accurately as possible. I assumed that the explanation provided with respect to the basis for the recruitment information -- that it had previously been based upon available documentation -- also applied to hiring information. I later learned this was not the case.

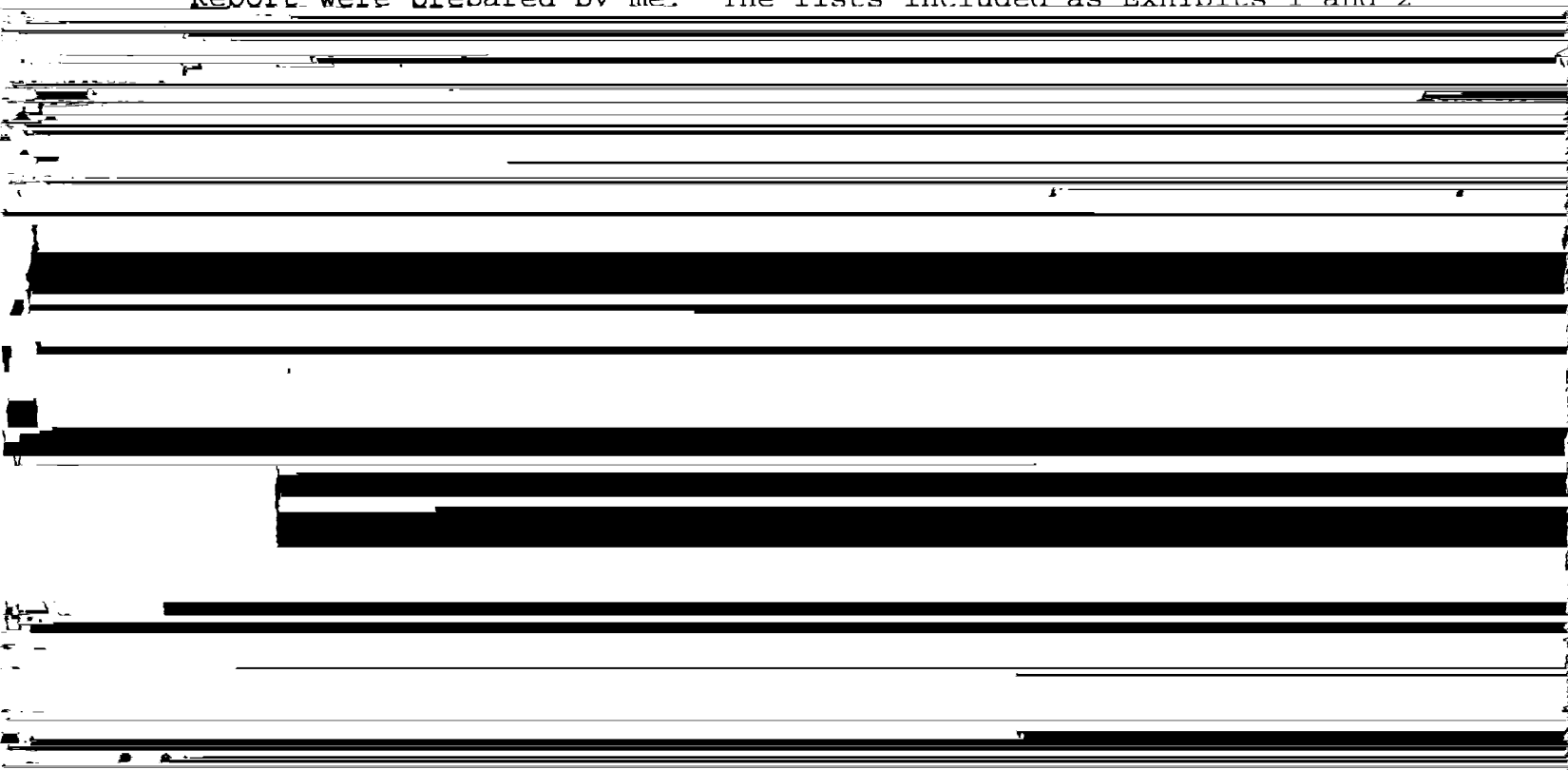
G. The January 24 Letter and DBI's Response.

31. On January 24, 1992, Ms. Cooper telephoned me regarding the January 13 Response. This conversation was memorialized by a follow-up undated letter to Mr. Bramlett from Mr. Wolfe (the "January 24 Letter") requesting in substance the following:

- (1) With respect to the 83 hires and the 57 "non-employees" listed in Exhibit A to the Second Supplemental Report, state whether the 57 non-employees (i) "are included in the 83 hires or whether they are in addition to the 83 hires" and (ii) explain what these individuals did at the Stations and why they were not considered employees;
- (2) Provide for all hires, regardless of the length of employment, the exact date of hire, the title, the 395-B classification, and full or part-time status of the position and the name, race, gender and date of termination of the hiree;
- (3) Explain the status in more detail of the 4 individuals originally listed in the Form 396 as hires during the Reporting Period but subsequently listed in the Opposition as non-employees.

32. By letter dated February 7, 1992, from me to Mr. Wolfe, DBI submitted Supplementary Materials (the "Third Supplemental Report") in response to the January 24 Letter. (Admissions Request, Attachment J.) The Third Supplemental Report consisted of two pages of text, Exhibit 1 ("Explanation of 83 Hires 1982 - Feb. 1989 by Date") (two

pages), Exhibit 2 ("Explanation of 57 Non-hires 1982 - Feb. 1989 by Date") (two pages) and Exhibit 3 (payroll records which document information provided in Exhibits 1 and 2) (303 pages). Exhibit 1 contained a list of the 83 employee new hires during the License Period, including the names of the hirees, their dates of hire, the titles of their positions, the FCC Form 395-B classification of their positions, the full or part-time status of their positions, the race and gender of the hirees and their dates of termination. Exhibit 2 contained a list of the 57 people who were hired during the License Period but who were not considered "employees" of the Stations, including their names, the dates of their hire, the titles of their positions, the FCC Form 395-B classification of their positions, the trainee or temporary status of their position, the race and gender of the individuals, their dates of termination and why they were not considered employees. The Third Supplemental Report also clarifies that the 57 "non-employees" are in addition to the 83 hires listed in Exhibit 1. The first two pages of text of the Third Supplemental Report were prepared by me. The lists included as Exhibits 1 and 2



These 57 individuals were not considered by the licensee to be employees of the stations because either (a) they were hired as independent contractors on a purely temporary or "fill-in" basis and were not intended to work on a permanent basis, or (b) they were hired on a permanent basis, but were asked to leave their employment after a 60 to 90-day probationary period because they were found not to be qualified for the positions for which they were hired.

It was also noted that the four individuals hired during the Reporting Year but not counted as "employee" new hires on the Form 396, as amended, were listed in Exhibit 2 and were hired on a temporary "fill-in" basis.

34. Footnote 2 on page 1 of the text of the Third Supplemental Report notes, inter alia, that (a) there are some inconsistencies between the number of female new hires and the number of new hires in the Stations' upper level job positions as reflected in the Form 396 for the Reporting Year and as reflected in Exhibit 1 and (b) there are "slight inconsistencies" in the number of new hires in the License Period as reflected in the January 13 Response and in Exhibit 1. The footnote states that the inconsistencies discussed in clause (a) above "are due to the fact that the members of the stations' staff who prepared the renewal did not prepare the data as carefully as they should." With respect to clause (b) above, it is further explained that the staff members who prepared the January 13 Response did so based on a manual count of the payroll records. Exhibit 1 represents a computer-assisted compilation of these materials, generating a more accurate list of the new hires. Exhibits 1 and 2 were derived from

the handwritten payroll sheets and the 1988 and 1989 computer print-outs.

35. By letter dated February 11, 1992, from me to Mr. Wolfe, DBI submitted revised Exhibits 1 and 2 to the Third Supplemental Report (the "February 11 Response"). The revised Exhibits corrected certain typographical errors and provided additional explanatory information. The February 11 Response was prepared by me and Mr. Bramlett jointly.

36. In a telephone conversation with Hope Cooper in late January or early February, 1992, when she asked me to provide her with the list of hires ultimately submitted on February 7, 1992, I told her that DBI had prepared a draft filing in January that provided some recruitment information with respect to some of the hires, but we did not feel we could rely on the information because it was based entirely on recall. She did not ask for the information in